

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JASON COTTERMAN

Plaintiff

vs.

City of Cincinnati, et al

Defendants

Case No. 1:17-ev-608

Judge William O. Bertelsman

Magistrate Karen L. Litkovitz

**MOTION TO FILE A FIRST AMENDED
COMPLAINT AND VACATE THE
SCHEDULING ORDER**

Plaintiff, through counsel, moves for leave to file a First Amended Complaint for the reasons set forth in the accompanying memorandum. Counsel for Defendants has been contacted and indicated that the motion will be opposed. A proposed order is attached for the Court's convenience.

Respectfully submitted,

/s/ Robert F. Croskery

Robert F. Croskery (0064802)

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MEMORANDUM

Plaintiff, through counsel, hereby requests leave to a First Amended Complaint to replace Defendant John Doe #1 with Federal Bureau of Investigation Agent Matt DeBlauw (for a Bivens action against him in his individual capacity) and to replace Defendant John Doe #2 with CPD Officer Michelle Longworth (in her official and personal capacity). Plaintiff filed the original complaint on September 12, 2017. Since that time Plaintiff and Defendants have been engaged in exchanging discovery documents and taking depositions. Under Rule 15 of the Federal Rules of Civil Procedures, a pleading can be amended if justice requires.

On August 8, 2019 in response to additional Discovery Defendants disclosed that Officer Michelle Longworth was the person who obtained Plaintiff's military service and medical records as alleged in the Complaint. On September 24, 2019, the deposition of Officer Michelle Longworth was conducted.

During the deposition Officer Longworth testified that she contacted Agent Matt DeBlauw of the Federal Bureau of Investigation and requested whether Cotterman, in his short stint in the Marines over a dozen years ago, had been a "sniper" or had been in "Special Operations". Officer Longworth testified that she did not provide any documentation to support the request for the records, nor did she attempt to obtain a warrant, nor did she obtain the permission of Plaintiff, nor, in fact, even advise him or his attorneys of her efforts.¹ Further, Officer Longworth received not only Plaintiff's military service record but also Plaintiff's military medical record from FBI Agent DeBlauw.²

¹ See Deposition of Officer Michelle Longworth Pg 49 lines 6-10

² See Deposition of Officer Michelle Longworth Pgs 52 line 18 – Pg 53 line 13.

Plaintiff was never contacted by Agent DeBlauw to sign any documents consenting to the release of these records by the Marine Corps. It is Plaintiff's belief that FBI Agent DeBlauw violated his HIPAA rights and Constitutional Rights by obtaining his military service and medical records and then turning them over to Officer Michelle Longworth, all in violation of his Constitutional Fourth Amendment rights.

Under Rule 15 of the Federal Rules of Civil Procedure, pleadings shall be "freely permitted when justice requires". As this new information (the identity of Defendant John Doe #1) has just come to light, as well as the person in the Cincinnati Police Department (the identity of Defendant John Doe #2) who participated in the violation, Plaintiff now requests leave of the Court to file an amended complaint. As John Doe #1 has turned out to be a federal agent, the proper cause of action is a Bivens Action.

A copy of the proposed Amended Complaint is attached to this Motion as Exhibit A.

Once the Complaint has been amended and the new Defendants served, Counsel will need to be obtained by Agent DeBlauw and discovery will need to be extended long enough to take his deposition. As a federal agent, he will have 60 days after service to respond. Officer Longworth had representation at her deposition but Counsel for Plaintiff does not know if she will keep her present counsel or retain different counsel. It is for these reasons Plaintiff also requests the current scheduling order be vacated.

CONCLUSION

For reasons set forth above, this honorable Court should Grant Plaintiff's Motion to File a First Amended Complaint.

CERTIFICATE OF SERVICE

This document was served current Defendants by the Court's Electronic Filing System.

/s/ Robert F. Croskery
Robert F. Croskery (0064802)

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**



Plaintiff

Case No. 1:17-cv-608

Judge William O. Bertelsman

Magistrate Karen L. Litkovitz

vs.

**City of Cincinnati
810 Plum St.
Cincinnati, Ohio 45202
c/o City Solicitor
Paula Boggs Muething
810 Plum St., Suite 214
Cincinnati, Ohio 45202**

**FIRST AMENDED
COMPLAINT WITH JURY DEMAND**

And

**Chief Eliot Isaac
Chief of Police
Cincinnati Police Department
in his Official Capacity
c/o City Solicitor
Paula Boggs Muething
810 Plum St., Suite 214
Cincinnati, Ohio 45202**

And

**Matt DeBlauw
In his official capacity as an FBI Agent
and in his personal capacity
Federal Bureau of Investigation
2012 Ronald Reagan Dr.
Cincinnati, Ohio 45236
c/o United States District Attorney for the
Southern District of Ohio
221 E. 4th St., Cincinnati, Ohio 45202**

And

Michelle Longworth

Exhibit A 1

in her official capacity as a Cincinnati
Police Officer, and in her personal capacity
c/o R. Jessup Gage, Esq.
Lazarus & Lewis, LLC
915 Cincinnati Club Building
30 Garfield Place
Cincinnati, Ohio 45202

Defendants

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this matter as a federal question under 28 U.S.C. §1331, because the Complaint raises a claim under the Health Insurance Portability and Accountability Act (“HIPPA”), 42. USC §1320 et. seq. and 42 U.S.C. §1983, deprivation of constitutional rights through State Action, and under the precedent of *Bivens versus Six Unknown FBI Agents*, 403 U.S. 388 (1971).

2. Venue is proper in this Court as the incidents giving rise to the claim occurred in Hamilton County, Ohio, within the territorial jurisdiction of this Court to hear. The Court has personal jurisdiction over the Defendant as it is headquartered in Hamilton County, Ohio.

PARTIES

3. Plaintiff Jason Cotterman is a citizen of the United States and of the state of Ohio, residing at the address listed in the caption and former police officer of the Cincinnati Police Department.

4. The City of Cincinnati is a political subdivision of the State of Ohio.

5. The Chief of Police of Cincinnati Police Department (CPD) Chief Isaacs who is sued in his official capacity.

6. Matt Deblauw, is an FBI agent, who in his official capacity, aided and abetted in the violation of Plaintiff's civil rights and is believed to work out of the office listed in the caption.

7. Michelle Longworth is a Cincinnati Police Officer who aided and abetted in the violation of Plaintiff's civil rights.

FACTS

8. Jason Cotterman was a successful and diligent police officer for the Cincinnati Police Department for a period of thirteen years, beginning at the Academy in September, 2003.

9. Jason had a solid service record with good evaluations (that he meets and exceeds standards, requires little supervision, and works well with others) and several commendations and thank you letters, including being nominated for the MADD award.

10. On March 22, 2015, Jason Cotterman was involved in the investigation of an incident involving an off-duty police officer who had a one car collision with a stationary object.

11. The off-duty police officer did not show signs of impairment to Jason Cotterman, who has had extensive experience in traffic stops and automobile collisions in evaluating impairment.

12. Unbeknownst to Jason Cotterman, another officer who was on the scene, but remaining in his cruiser, and did not approach Officer Cotterman, received a statement from a third-party witness.

13. The third-party witness indicated that the officer who had had the one car accident appeared to have been driving impaired several blocks earlier.

14. This information was not timely shared with Officer Cotterman, who had assumed the lead as the first officer on the scene. The officer failing to share the information was the senior police officer present, and had over twenty years on the force.

15. As it later turned out, the story of the third-party witness was not credible, and was filled with numerous discrepancies, which were detected in the first interview done by the Cincinnati Police Department.

16. Officer Cotterman behaved properly, under the circumstances, in the decision not to cite the officer who had had the one car collision, and a police sergeant hearing the facts agreed with Cotterman's decision.

17. Upon information and belief, there are thousands of incidents in which persons involved in one car accidents as private citizens have not been cited.

18. There are literally dozens of incidents involving police officers who have had one car incidents and not been cited, including Chief Eliot Isaacs and the senior police officer on the scene who failed to share information.

19. The Defendant City of Cincinnati Police Department, acted, under a policy and custom of rewarding favorites of the Chief and punishing those who hurt favorites of the Chief, to prosecute Jason Cotterman and the Sergeant for alleged "dereliction of duty" and "obstruction of justice" in not citing the officer involved in the one car collision.

20. On April 29, 2015, the City of Cincinnati brought Officer Cotterman to be "Mirandized" for a potential criminal charge. As part of that process, there are interrogation rooms that contain audio and video recording equipment.

21. Prior to entering the assigned interrogation rooms, Sergeant McCurly informed Officer Cotterman that "it is in your best interest to go along with the Administration's version of events."

22. Officer Cotterman invoked his Fifth Amendment rights.

23. The City then suspended Officer Cotterman's police powers for "Fitness for Duty" on May 1, and, two days later, after Plaintiff invoked his Fifth Amendment rights, detailed Officer Cotterman from District 5 to District 2. Officer Cotterman became angry at this unfair turn of events, and an Officer In Charge for Internal ordered Plaintiff to begin seeing the CPD

psychologist on a weekly basis.

24. The City then cited Officer Cotterman on a 527 Arrest Form on the weekend of July 4, 2015, and summoned him to appear. Plaintiff was given two criminal charges for “dereliction of duty” and four for “obstruction of justice”.

25. Officer Cotterman considered these charges to be politically motivated, grossly unfair, and frivolous.

26. The media became interested in the story after charges were filed and started hounding Plaintiff. Moreover, his wife was pregnant in a high-risk pregnancy. Officer Cotterman, who had accrued hundreds of hours of time in time banks, began to use his accrued time off to ameliorate the distress caused by this unfair prosecution.

27. Around July 7th, 2015, Officer Cotterman went to see the CPD psychologist, who put Officer Cotterman on administrative leave.

28. The City continued its efforts to criminally convict Officer Cotterman, in a case that went to trial on March 1, 2016.

29. The trial was politically motivated and a farce, in that even the City’s own Expert Witness, when given the full facts, acknowledged Plaintiff Jason Cotterman’s actions were within his discretion as a police officer. The expert further noted that Officer Pike’s actions in not informing Officer Cotterman about the third-party witness and not getting out of his cruiser to assist or to check on the accident victim’s condition were reprehensible.

30. Moreover, the City intentionally ignored and failed to share exculpatory evidence, namely that probationary police officer who was riding in in Officer Pike’s car corroborated Officer Cotterman’s request for help.

31. The City was, predictably, unsuccessful in its prosecution of Plaintiff Cotterman, whose

bench trial handed in a Not Guilty verdict without the Defense putting on a case.

32. However, after the trial, the City of Cincinnati, through its Police Department, acted to administratively discharge Officer Jason Cotterman within six weeks of its unsuccessful trial.

33. The City did so by improperly obtaining, and then using, ancient military medical records.

34. Although Plaintiff Jason Cotterman had been involved in a medically motivated Honorable discharge from the United States Marine Corps over a decade prior, the records themselves contained significant inaccuracies.

35. Moreover, Jason Cotterman did not provide any valid authorization for the City of Cincinnati or the Police Department to obtain such records.

36. Through discovery it has become known that Defendant Officer Michelle Longworth, part of Internal Investigations, obtained the records, without a warrant and without showing probable cause to a judge, by calling an FBI agent and accepting the records under a pretext that she was looking for evidence that Cotterman had been “a sniper” or had been in “Special Operations” in the Marines.

37. Specifically, Officer Longworth, after a referral, called Defendant Matt Deblauw of the Federal Bureau of Investigation and requested military information on Cotterman. Officer Longworth did not provide any documentation to the FBI to support her request for information, and did not use a subpoena, a warrant, or an authorization from Jason Cotterman.¹

38. Officer Longworth received a brown envelope from Agent Deblauw containing Plaintiff’s military records, including medical military records, from Defendant Deblauw, which was subsequently circulated (without Cotterman’s knowledge or permission) through various parts of

¹ See Deposition of Officer Michelle Longworth Pg 49 lines 6-10

the CPD, including Internal Affairs, the CPD Psychologist, and the CPD Command Staff.²

39. Defendant Deblauw at no time contacted Plaintiff to obtain a signed release to obtain his private military and military medical records.

40. The inaccurate medical information contained in the records was used, along with other information from Dr. Daum, the CPD psychologist, to institute a medical discharge against Plaintiff Jason Cotterman.

41. Cotterman initially appealed, but did not follow through once he learned that, absent a second opinion as an alternative to the City's paid psychologist, that pursuing the appeal would be a waste of effort.

42. Officer Cotterman had attempted to get a second opinion, from Dr. Modrell, but the City psychologist refused to provide the military medical records to her on which he based his decision, in part, and someone from Internal Investigations called her to read purposed text messages of Officer Cotterman, rendering her unable to deliver a supportive opinion.

43. The city chose to do, administratively, what it could not do through its farcical trial; that is, to punish Officer Cotterman for his failure to cooperate with the City's version of events by separating him from service.

44. The Cincinnati Police Department has a policy of punishing, reprimanding, and otherwise retaliating against Officers that do not "toe the line" in terms of cooperating with public narrative it wishes to present.

45. Officer Cotterman, in connection with this administrative discharge, done by a psychologist, Dr. James Daum, was emotionally distraught, because he had lost a job that he did well, did to the benefit of the citizens of the city of Cincinnati, and was experiencing serious and

² See Deposition of Officer Michelle Longworth Pgs 52 line 18 – Pg 53 line 13.

debilitating emotional distress as a result of the City's actions under the color of state law.

46. Officer Cotterman finally received a detailed action clearing him for duty from another qualified psychologist, who does such assessments in nearby Franklin County and Montgomery Counties.

47. The City of Cincinnati consented to a reevaluation using its own psychologist, but then trumped up reasons to deny restoring Officer Cotterman to active duty.

48. Officer Cotterman, through counsel, pointed out the errors in the revised report and gave the City another chance to fix the situation.

49. Once again, the City failed to rehire Jason Cotterman within a reasonable time.

50. Jason Cotterman, following this unfair and politically motivated prosecution and discharge from the Police Department, then worked to restore himself to full health after his unfair treatment, including working out, abstaining from alcohol, and dedicating himself to being in a state fit to resume his police duties.

51. As part of this evaluation, after a period of a year, Jason Cotterman went to be reevaluated by another psychologist, one who does the police evaluations for other large Ohio cities, including Columbus and Dayton, and received a clean bill of health.

52. The Police Retirement fund would not provide Jason Cotterman a medical pension because they believe his condition to be temporary.

53. After receiving a clean bill of health from another psychologist, that evaluates major police departments, Jason Cotterman furnished this evaluation to the city.

54. The City of Cincinnati psychologist, again for political motivated reasons of retaliation, administered his own test, but disregarded its objective results, which showed that Jason Cotterman was psychologically fit for duty.

55. In doing so, the police department psychologist again referred to ancient medical records, and used isolated instances twisted to fit their narrative and desired results, in clear contravention of the standard operating procedures used for such instances.

56. Under the criteria now used by the City of Cincinnati Police Department Psychologist, to single out Cotterman, it is highly improbable that Jason Cotterman will ever be restored to police duty, in spite of the fact that he is well suited for it.

57. Jason Cotterman also became involved, through his contacts with the police, in discovering a case where an allegedly corrupt police officer was not disciplined, suspended, or placed on administrative duty in spite of extremely serious allegations of criminal conduct.

58. The police officer accused of misconduct has, upon information in belief, gotten preferential treatment from the outset of his career, including an early preferential assignment to parks, and an incident in which he, while driving a police cruiser, hit a civilian pedestrian, failed to report it in violation of policy, and received only a written reprimand.

59. The City of Cincinnati discovered that Jason Cotterman was reporting the misconduct of the Police Department in preferentially treating a corrupt officer based on his personal connections.

COUNT I – DEPRIVATION OF CONSTITUTIONAL RIGHTS, UNDER COLOR OF LAW, AS PROTECTED IN 42 U.S.C. 1983

60. Plaintiff realleges all the foregoing paragraphs as if fully rewritten herein.

61. The City of Cincinnati and its Police Department's decision to politically prosecute him and then administratively take away Plaintiff Cotterman's police officer status was a deprivation of his constitutional rights as protected in the Fifth Amendment, both substantive and procedural due process.

62. He was also deprived of his rights because of a clear policy on the part of the City of

Cincinnati that it would retaliate against police officers that did not “toe the line” and agree with its public narrative.

63. The City of Cincinnati acted to maliciously prosecute Jason Cotterman, and abused process, as the suit was brought for an improper purpose, specifically to discourage others from not going along with the CPD's narrative.

64. The Defendants also violated Plaintiff's rights to be free from illegal Search and Seizure, as protected under the Fourth Amendment of the Constitution, by surreptitiously obtaining Cotterman's private military medical information without probable cause and conveying them to third parties.

65. The Defendants also used a criminal search warrant to obtain and store private information, including multiple photographs of his wife, that were taken and stored without probable cause.

66. The City of Cincinnati and its Police Department acted to intrude upon Jason Cotterman's privacy, a clearly protected right under the United States Constitution in the numbers of the Fourth and Fifth amendments of the Constitution of the United States.

67. The City's use of a criminal search warrant and unconstitutional procedures to obtain evidence used in an administrative proceeding violated Plaintiff's due process rights and invaded his privacy, injuries caused by Defendants under color of state law.

COUNT TWO: HIPAA VIOLATION OF 42 U.S.C. 1320 et. seq.

68. Plaintiff realleges paragraphs 1-59 as if fully rewritten herein.

69. Federal Bureau of Investigation Agent Deblauw acted to improperly obtain Jason Cotterman's military medical records and then improperly turned them over to Officer Longworth an officer of the Cincinnati Police Department who turned the illicitly received

records over to The City of Cincinnati, and its Police Department, who, while knowing the records were not relevant to his policing, after thirteen years, used them to trump up a reason to administratively discharge Jason Cotterman and prevent him from getting a fair administrative hearing, in violation of HIPPA.

70. This conduct was tantamount to HIPPA Violation of 42 U.S.C. 1320 et seq.

71. The conduct was done maliciously, and in an attempt to harm Jason Cotterman's reputation, or with reckless disregard of the probable results.

72. The action did, in fact, harm Jason's reputation, and inflicted upon him severe emotional distress.

73. Plaintiff is entitled to compensatory damages, his reasonable attorney fees and costs, and punitive damages to the extent allowed against these Defendants under Federal law, and to an injunction prohibiting CPD from misusing such records in the future.

COUNT THREE: ABUSE OF PROCESS

74. Plaintiff realleges paragraphs 1-59 as if fully rewritten herein.

75. The City of Cincinnati and its Police Department, knowing that its charges were frivolous and could not be supported under the law, brought charges against Jason Cotterman for an ulterior purpose, that of making an example of a policeman that did not go along with the Department's official story.

76. This conduct was tantamount to abuse of process.

77. The conduct was done maliciously, and in an attempt to harm Jason Cotterman's reputation, or with reckless disregard of the probable results.

78. The action did, in fact, harm Jason's reputation, and inflicted upon him severe emotional distress.

79. Plaintiff is entitled to compensatory damages, his reasonable attorney fees and costs, and punitive damages to the extent allowed against these Defendants under Ohio law.

COUNT FOUR: MALICIOUS PROSECUTION

80. Plaintiff realleges paragraphs 1-59 as if fully rewritten herein.

81. The City of Cincinnati, aided by Cincinnati Police Department, acted with malice in prosecuting Jason Cotterman.

82. The City of Cincinnati did not have probable cause to prosecute Plaintiff for either obstruction of justice or dereliction of duty.

83. Jason Cotterman was acquitted by the Court after the City's frivolous prosecution.

COUNT V: BIVENS ACTION AGAINST FBI AGENT MATTHEW DEBLAUW

84. Plaintiff realleges paragraphs 1-59 as if fully rewritten herein.

85. Plaintiff Cotterman has a constitutionally protected right to be safe from unreasonable search and seizure, under the Fourth Amendment to the U.S. Constitution.

86. Plaintiff Cotterman has a constitutionally protected right to privacy of his personal information, under the penumbra of privacy rights emanating from the Fourth, Fifth, and Ninth Amendments to the U.S. Constitution.

87. Plaintiff Cotterman has a right to Substantive and Procedural Due Process under the Fifth Amendment to the U.S. Constitution.

88. Defendant Deblauw, a federal officer acting under color of federal authority, violated Plaintiff's Constitutional rights as enumerated in paragraphs 85, 86, and 87.

89. With the possible exception of those military medical records covered under HIPAA, a subset of the records provided by Agent Deblauw. Plaintiff has no statutory cause of action providing a meaningful remedy.

90. A remedy of compensatory damages will provide relief for the Constitutional violations and deter future Federal Officers from denying Constitutional Rights.

PRAYER FOR RELIEF

WHEREFORE, having fully pleaded his cause, Plaintiff Jason Cotterman asks that this honorable Court order the City of Cincinnati to restore and reinstate him to his position on the Cincinnati Police Department, and provide his back pay, medical expenses, reasonable costs and attorney fees, compensatory damages, and , as to Defendants Longworth and Deblauw, that he be provided compensatory damages, punitive damages to the extent allowed by law, and that all Defendants be enjoined from using the improperly obtained records, and that Cotterman be provided any and other such relief as this Court or a jury may direct.

Respectfully submitted,

/s/ Robert F. Croskery

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JURY DEMAND

Plaintiff Jason Cotterman hereby demands a jury to hear all issues triable to a jury.

/s/ Robert F. Croskery
Robert F. Croskery (0064802)